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**FEDERAL COMMUNICATIONS COMMISSION
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**SUPPLEMENTAL MEMORANDUM REGARDING
PERFORMANCE MEASUREMENTS AND THE
ACCOMPANYING REPORTING AND
ENFORCEMENT MECHANISMS**

SUBMITTED BY

SBC COMMUNICATIONS INC.

AND

AMERITECH CORPORATION

APRIL 12, 1999

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**Additional Performance Measurement and Reporting Systems
Developed in Connection With Section 271 Proceedings
Render Undetected Discrimination By SBC's ILECs Essentially Impossible**

I. Introduction

This paper describes the extensive new regime of performance measurements, and the related reporting obligations and enforcement systems, that have recently been developed by SBC Communications Inc.'s ("SBC") incumbent local exchange carriers ("ILECs")¹ with the United States Department of Justice ("DOJ"), state public utility commissions ("PUCs") and competitive local exchange carriers ("CLECs") in the market-opening proceedings under Section 271 of the Telecommunications Act of 1996 (the "1996 Act"). These additional performance measurement and reporting systems render undetected discrimination by SBC's ILECs against CLECs essentially impossible.

As discussed in this paper, the existence of this new performance measurement and reporting regime addresses and directly contradicts two of the fundamental assumptions underlying the negative spillover or "big footprint" theory put forth on behalf of Sprint by John Haynes, Jith Jayaratne and Michael Katz.² For that speculative and unproven theory to have any viability, two conditions must exist: (1) SBC's ILECs must be able to engage in effective — undetected — discrimination against CLECs and (2) regulators must not have sufficient information to allow them to identify and combat such discrimination. The

¹ For the purposes of this paper, the term "SBC's ILECs" and, where appropriate, "ILECs" refers to SBC's Bell Operating Company ILECs: Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell and does not include The Southern New England Telephone Company or The Woodbury Telephone Company.

² See An Empirical Analysis of the Footprint Effects of the Mergers Between Large ILECs, In re Applications for Transfer of Control to SBC Communications Inc. of Licenses and Authorizations Held by Ameritech Corporation, CC Docket No. 98-141 and GTE Corporation and Bell Atlantic Corporation For Consent to Transfer of Control, CC Docket No. 98-184) (April 2, 1999) (filed by Sprint Communications Company, L.P.).

performance measurement regime renders both of these assumptions unsupportable. This regime provides CLECs and regulators volumes of new information about all key elements of services that ILECs provide to CLECs and renders undetected discrimination against CLECs essentially impossible. Moreover, the performance measurement regime is an effective regulatory tool. Regulators will have access to all the performance measurement information about each and all CLECs served by each SBC ILEC; this eviscerates concerns about regulators somehow not having adequate information to identify and deal with ILEC-to-CLEC discrimination. The dynamic nature of the regime will help ensure that appropriate adjustments are made so that the information and oversight remain effective tools against discrimination for CLECs and regulators in the future.

Under this regime, SBC's ILECs continuously measure and report publicly on how the ILECs provide operations support systems ("OSS") and services to CLECs in comparison to how they provide OSS and services to their own retail operations and, in those instances where the ILECs do not provide services to themselves, on how their OSS and services to CLECs compare to objective standards. In that regard, Southwestern Bell Telephone Company ("SWBT") files monthly reports with the DOJ and the Federal Communications Commission ("FCC" or "Commission"), and SWBT and Pacific Bell ("PacBell") report performance measurement results on a special SBC website that can be accessed by both regulators and CLECs.³

The addition of this new performance measurement and reporting regime — which provides more focused, detailed, comprehensive and timely information than has ever been

³ Nevada Bell will begin reporting no later than July 15, 1999 for the month of June 1999 and will thereafter post monthly reports.

available — should also eliminate any concern that any alleged loss of “benchmarks” as a result of the SBC-Ameritech merger will somehow adversely affect the ability of the FCC or state regulators to regulate, or the ability of CLECs to compete. As a result of the measurement and reporting regime, each individual CLEC can compare the performance of its SBC ILEC in providing service to itself to that which it provides to (i) the individual CLEC on a stand-alone basis and (ii) CLECs in the aggregate. In addition, the performance of the ILEC in providing services to the individual CLEC can be compared with an objective standard where the service it provides has no retail analog. Regulators have access to and can compare the information available to each individual CLEC.

Opponents of the SBC-Ameritech merger and others have asserted that the loss of a regional Bell operating company (“RBOC”) as a benchmark could impede the ability of regulators to: (a) protect against future non-price discrimination against CLECs and (b) determine the technical feasibility of new types of interconnection in geographic areas where competition develops more slowly.⁴ As shown in the separate paper on benchmarking issues (submitted to the FCC on March 26, 1999, hereinafter the “Benchmarking Paper”),⁵ these concerns are completely misplaced. The relevant issue is not RBOC-to-RBOC, holding

⁴ At the February 5, 1999 FCC Round Table on the Economics of Mergers Between Large ILECs, it was generally agreed that, in the future, benchmarks would not be important for traditional regulatory issues, such as rate regulation and accounting cost efficiency. In re Round Table on the Economics of Mergers Between Large ILECs, Transcript, CC Docket No. 98-141, at 46-47, 57-58 (Feb. 5, 1999) (“Economic Roundtable”) (testimony of Drs. Farrell and Noll), see also id. at 122-124 (testimony of Dr. Katz). It was also generally recognized that other benchmarks would not be needed in areas where there is local exchange competition, id. at 51-52, 57 — exactly the kind of competition that will develop quickly as a result of the implementation of the National-Local Strategy.

⁵ Supplemental Memorandum Regarding Regulatory Benchmarking Issues, In re Applications for Transfer of Control to SBC Communications Inc. of Licenses and Authorizations Held by Ameritech Corporation, CC Docket No. 98-141 (Mar. 26, 1999) (filed by SBC and Ameritech).

company-level comparisons, but rather, the performance of the ILECs themselves. The new performance measurement and reporting regime has been developed by SBC and its ILECs, CLECs and regulators on a state-by-state, telco-by-telco basis, and not an RBOC-to-RBOC basis. It renders undetected non-price discrimination essentially impossible and, with SBC's willingness to include "liquidated damages" provisions in interconnection agreements with CLECs, provides strong incentives for SBC's ILECs not to discriminate against CLECs.

Moreover, as part of SBC's commitment to follow "best practices," after the merger is consummated, SBC will offer the regime already developed for SBC's ILECs as the starting point for negotiations by Ameritech's ILECs with CLECs and the relevant PUCs to establish similar systems in Ameritech's states, thereby further enhancing through the merger the procompetitive regulatory environment in the Ameritech states. For example, in Ohio, SBC will establish a task force within 30 days of the merger closing date to review the economic and technical feasibility of implementing all of the performance measurements and related standards to which SBC has committed in Texas. Assuming there are no material differences in the underlying systems, SBC has agreed to implement within 90-180 days of the merger closing date the performance measurements and related standards that SBC has committed to implement in Texas. If SBC fails to implement at least 79 of the 105 performance measures and related standards in Ohio within 270 days of the merger closing date, SBC will make a payment of \$20 million.⁶

⁶ Stipulation and Recommendation, In re Joint Application of SBC Communications Inc., SBC Delaware, Inc., Ameritech Corporation, and Ameritech Ohio for Consent and Approval of a Change of Control, Case No. 98-1082-TP-AMT, § IV.D (Ohio Pub. Utils. Comm'n Feb. 23, 1999) (filed by staff of the Public Utilities Commission of Ohio, SBC, Ameritech and certain intervening parties) (relevant portions of which are attached hereto at Exhibit 1).

In the following sections of this paper we provide an overview of the performance measures and standards, the reporting of the ILECs' performance and the performance enforcement mechanisms already in place and being developed in concert with the state commissions. At the outset, however, we believe it is important to note that the addition of this new comprehensive performance measurement and reporting regime completely refutes the suggestion of Dr. Katz at the Economic Roundtable that, after the merger, SBC's ILECs would not provide to CLECs the same level of service that they provide to themselves.⁷ First, as a legal matter, the 1996 Act and the FCC's implementing rules require ILECs to provide CLECs with nondiscriminatory access to operations support and other services necessary to compete effectively with the ILECs.⁸ Second, SBC's performance measurements will clearly demonstrate to individual CLECs, the state commissions, the FCC and the DOJ whether or not SBC's ILECs are providing parity and meeting the objective standards. If they do not, they may be subject to liquidated damages and other enforcement mechanisms. While Dr. Katz is correct that there are "legitimate differences" between internal (ILEC-to-CLEC) benchmarks and RBOC-to-RBOC benchmarks,⁹ he was unaware of or he ignored the performance measurement and reporting systems now in place in SBC's

⁷ Economic Roundtable at 64-65.

⁸ See 47 U.S.C. §§ 251(c)(3), (d)(2); see also Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd. 15499, ¶ 518 (1996), aff'd in part and vacated in part, Competitive Telecomm. Ass'n v. FCC, 117 F.3d 1068 (8th Cir. 1997), and Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), aff'd in part, rev'd in part and remanded sub nom. AT&T Corp. v. Iowa Utils. Bd., 119 S. Ct. 721 (1999). The Supreme Court vacated and remanded to the FCC, the Commission's rule which set forth specific network elements that ILECs were required to unbundle. 119 S. Ct. at 736. The Court stated that the Commission must consider the 1996 Act's "necessary" and "impair" requirements in formulating which network elements ILECs will be required to unbundle. Id.

⁹ Economic Roundtable at 65.

ILECs' regions — more comprehensive and meaningful measures of whether the markets are open than any hypothetical future RBOC-to-RBOC comparisons.

II. Performance Measurement Reporting and Enforcement Mechanisms

A. Background — Performance Measurements in Interconnection Agreements

Initially, SBC's ILECs negotiated and included performance measurements in many of their interconnection agreements negotiated with CLECs, particularly those affiliated with the Interexchange Carriers ("IXCs"), and that process is ongoing. In general, these agreements require the SBC ILECs to measure the quality of service they provide to the CLEC, and in many cases provide for payment of liquidated damages if the quality of service the ILEC provides to the CLEC is less than the quality of service it provides to itself or does not meet the specified objective standard.¹⁰

The 1996 Act requires (and PUCs have affirmed) that all ILEC interconnection agreements be filed with, approved by and be made publicly available at the relevant PUCs,¹¹

¹⁰ Southwestern Bell Telephone Company's Direct Testimony of William R. Dysart, In re Application of SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region InterLATA Services in Missouri, Docket No. TO-99-227 (Mo. Pub. Serv. Comm'n Oct. 29, 1998); SBC Communications Inc., Pacific Bell, and Pacific Bell Communications, Affidavit of Gwen S. Johnson, In re Pacific Bell (U 1001 C) and Pacific Bell Communications Notice of Intent to File Section 271 Applications for InterLATA Authority in California, Docket Nos. R.93-04-003 et al. (Cal. Pub. Utils. Comm'n Mar. 31, 1998). All of SBC's ILECs' interconnection agreements are publicly available. We would be pleased to provide the staff with samples of performance measures contained in such agreements if it wishes to review them.

¹¹ 47 U.S.C. §§ 252(e), (h). A number of state PUCs have affirmed that this provision applies to all terms of an agreement. For example, the Missouri Public Service Commission, in denying a motion to keep an interconnection agreement under seal prior to its approval by the agency, concluded that "no part of the agreement . . . should be held from public view, especially in light of the fact that, if approved, it will be made public ten days after that approval." In re Application of Southwestern Bell Telephone Company for Approval of Interconnection Agreement Under the Telecommunications Act of 1996 with Communications Cable-Laying Company, d/b/a Dial US, Order, Case No. TO-96-440, 1996 Mo. PSC Lexis 29, at *3 (Mo. Pub. Serv. Comm'n June 26, 1996); see also In re Application

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and other CLECs have the right to “pick and choose” sections of approved agreements and adopt them as part of their own interconnection agreements.¹² CLECs thus always have the ability to obtain access to the performance measurements and remedies incorporated in approved agreements. The state commissions and the FCC are able to use these performance measurements to obtain consistent comparative data as to the performance of different ILECs.

B. Development of New Performance Measures

In 1997, SBC began negotiations with the DOJ to develop a set of performance measurements, to demonstrate not only that SWBT was providing nondiscriminatory access sufficient for obtaining Section 271 relief, but also to prevent “backsliding” once Section 271 relief is granted. In March 1998, SWBT submitted to the DOJ a list of 66 performance measures that the DOJ agreed “would be sufficient, if properly implemented, to satisfy the Department’s need for performance measures for evaluating a Section 271 application filed in the not-too-distant-future.”¹³

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of Ameritech Ohio for Approval of an Interconnection Agreement Between Ameritech Ohio and Communications Buying Group, Inc. Pursuant to Section 252 of the Telecommunications Act of 1996, Order, Case No. 96-604-TP-UNC, 1996 Ohio PUC Lexis 446 (Ohio Pub. Utils. Comm’n July 10, 1996).

¹² 47 U.S.C. § 252(i); 47 C.F.R. § 51.809.

¹³ See Letter from Donald J. Russell, Chief, Department of Justice Telecommunications Task Force to Liam S. Coonan, Senior Vice President and Assistant General Counsel, SBC Communications Inc. (Mar. 6, 1998) (a copy of which is attached hereto at Exhibit 2).

SWBT and PacBell working with CLECs and the state commissions in Section 271-related proceedings in California¹⁴ and Texas,¹⁵ have expanded these 66 measures into 105 performance measurements in Texas¹⁶ and at least 43 in California. While the number of performance measurements varies by operating company, the reports contain similar data. SWBT's performance measurement reports contain more than 1500 submeasurements statewide in Texas, and PacBell's 43 performance measurements include approximately 1300-1400 submeasurements. The Texas measures are likely to be used as a template for negotiation in SWBT's other states (Missouri, Oklahoma, Kansas and Arkansas), with appropriate modifications to reflect the unique circumstances in those states. In February 1999, Nevada adopted performance measurements similar to California.¹⁷ A more complete description of the state processes that led to the development of the measurements in Texas, California and Nevada is attached hereto at Exhibit 3.

¹⁴ Order Instituting Rulemaking on the Commission's Own Motion into Monitoring Performance of Operations Support Systems, and Order Instituting Investigation on the Commission's Own Motion into Monitoring Performance of Operation Support Systems, Opinion, Docket Nos. R.97-10-016 and I.97-010-017 (Cal. Pub. Utils. Comm'n Oct. 9, 1997) ("OSS OII Opinion"). (This investigation and rulemaking proceeding is referred to as OSS OII in these notes.)

¹⁵ In re Investigation of Southwestern Bell Telephone Company's Entry into the Texas InterLATA Telecommunications Market, Project No. 16251 (Tex. Pub. Util. Comm'n).

¹⁶ SWBT, the Texas PUC and the CLECs are currently negotiating additional performance measures, including measures relating to number portability.

¹⁷ In re Commission Investigation into Procedures and Methods Necessary to Determine Whether Interconnection, Unbundled Access, and Resale Services Provided by Incumbent Local Exchange Carriers Are at Least Equal in Quality to That Provided by the Local Exchange Carrier to Itself or to Any Subsidiary, Affiliate, or Any Other Party, Order, Docket No. 97-9022 (Nev. Pub. Utils. Comm'n Mar. 10, 1999).

The DOJ and state performance measurements cover all categories of OSS and services ILECs provide to CLECs. The categories, and a brief description of some of the related performance measurements, are as follows:

1. Pre-ordering. Pre-ordering involves the exchange of information between the ILEC and the CLEC about a current or potential customer and is used by the CLEC to prepare and submit an accurate order for service. Pre-ordering capabilities include address verification, service and features availability, telephone number assignment, due date availability, dispatch requirements and customer service records. The pre-ordering performance measurements include OSS interface availability (the hours and days the ILEC pre-order OSS are available to CLECs and non-scheduled downtime) and average response times for OSS pre-order interfaces (measuring the speed with which the CLEC service representatives receive information for specified functions such as address verification, request for telephone number, and request for customer service record). The measurement standard depends on whether the CLEC uses SWBT's EASE or PacBell's Starwriter or PacBell/Nevada Bell's SORD¹⁸ (which are the same pre-ordering systems used by SWBT, PacBell and Nevada Bell), or another electronic pre-ordering interface such as Verigate or DataGate.
2. Ordering. Ordering involves the actual transmittal of the service request from the CLEC to the ILEC with the information necessary for issuance of a service order. The ordering performance measurements examine the speed at which the ordering center answers calls, the availability of OSS ordering interfaces, the time it takes to process an order to completion, the time it takes to reject a faulty order, and the ordering quality, including the number of orders that are rejected and the number of orders that are accepted without manual intervention.
3. Provisioning. Provisioning relates to the activation of service in accordance with the service order, and includes the exchanges of information regarding the status of the service being requested. The provisioning performance measurements assess the time it takes from initiation of a customer request for service to completion, and they also measure the quality of installation service. Provisioning performance measurements for resale and/or for unbundled network elements ("UNEs") include the average number of days from the application date to the completion date, the number of orders completed within an agreed-upon number of days, the percentage of orders where installation was not completed by the due date due to ILEC failure, the percentage of missed due dates due to lack of facilities, the average calendar days from due date to completion due to lack of facilities and the percentage of customer trouble reports received.

¹⁸ Attached hereto at Exhibit 4 is a list of acronyms and terms used in the performance measures reports.

4. Maintenance. Maintenance involves the restoration and repair of customer service. The maintenance performance measurements examine trouble reporting and clearances and network quality. The maintenance trouble reporting and clearance performance measurements include the trouble report rate, the percentage of repeat trouble reports, the average time to repair, the percentage of out-of-service troubles not repaired within 24 hours, the percentage of missed repair commitments and the time it takes to reach a repair service representative. The network quality performance measures examine the interconnection trunking quality of service, including the percentage of calls blocked going from an ILEC end office to a CLEC end office and from an ILEC tandem to a CLEC end office, the percentage of local common trunk groups exceeding two percent blockage, the distribution of common transport trunk groups exceeding two percent blockage, the percentage of missed trunk order due dates and the average trunk restoration interval.
5. Billing. Billing involves the exchange of information necessary for CLECs to bill their customers, to process an end user's claims and adjustments and to view the ILEC's bills for services provided to the CLECs. The billing performance measurements look at bill timeliness, completeness and accuracy, including the percentage accuracy of CRIS, CABS and toll/usage bills based on audits, the percentage of bills transmitted correctly, the percentage of service orders on the bill for the current bill period, the percentage of wholesale bills sent after a certain period after the end of the billing period, the percentage of usage data transmitted on time and the percentage of usage data that is unbillable.
6. Other performance measurements account for the time it takes for operator services and directory assistance to answer calls and the timeliness and accuracy of database updates to the 911 system.

In response to requests from various CLECs, SWBT and PacBell/Nevada Bell negotiated additional performance measurements beyond those approved by the DOJ.¹⁹ The negotiations with CLECs in California and Nevada have led to somewhat streamlined performance measurements reflecting the CLECs' decision that some measurements do not provide useful information.²⁰ In all cases, however, SWBT and PacBell are reporting (and

¹⁹ For example, SWBT and PacBell/Nevada Bell both measure collocation performance, including the average time required to respond to a collocation request and the average time to provide a collocation arrangement. They also measure the time to load the local number prefix ("NXX").

²⁰ For example, the pre-ordering and ordering measurements do not include a report on the percentage of rejects, as neither the CLECs nor the PUCs found the measurement necessary. Similarly, no grade of service measurements are provided for operator or directory services

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Nevada Bell will be reporting) in a timely and detailed way on all the categories of OSS and services ILECs provide to CLECs. Complete lists of the DOJ, SWBT (Texas), PacBell and Nevada Bell performance measures are attached hereto at Exhibits 5, 6, 7 and 8.

These performance measurements provide a detailed comparison of each SBC ILEC's performance in providing services to itself *vis à vis* the CLECs (the "parity measurements")²¹ and, where the ILEC does not provide a service to itself that corresponds to a service it provides to a CLEC, in relation to objective standards (the "meaningful opportunity to compete" measurements).²² In certain cases, where a process being measured is, by design, the same for the ILEC and CLEC (e.g., common transport trunk blockage and operator and directory assistance), measurements are diagnostic only (i.e., there is no independent standard), since both the ILEC and the CLEC are, by definition, using the same service or facility and discrimination is inherently impossible.

C. Reporting of the Performance Measures

Reporting on the SBC ILECs' performance is extensive and available to all relevant parties. The DOJ, the FCC and the relevant state commissions all have complete access to the performance measurement results, both in hard copy and on-line. Each CLEC has, will have or can obtain access to its own data, aggregate CLEC data and SWBT, PacBell or

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since the customers of both the ILECs and the CLECs access these services through the same trunks.

²¹ Examples where parity standards are used include the average response time for pre-ordering and ordering using EASE, Starwriter or SORD, billing accuracy and completeness, provisioning and maintenance for resale and UNE combinations recombined by SBC's ILECs.

²² Examples include pre-ordering using DataGate and Verigate, ordering using EDI or LEX, timeliness of the wholesale billing and average installation intervals for UNEs.

Nevada Bell data (whichever is applicable). The raw data used to report the results is available upon request to the CLECs (for their own service) and the PUCs (for all CLECs), and the accuracy of the reported results will be subject to independent audit.²³

1. Filings. Since March 1998, SWBT has been filing performance measurement reports²⁴ with the DOJ²⁵ and the FCC.²⁶

2. Website Posting. SWBT and PacBell also post their performance measurement results on an SBC interactive website.²⁷ Nevada Bell will begin similar

²³ Audit and verification processes are contemplated in all three states. In Texas, existing interconnection agreements have audit provisions and the current proposals call for independent audits of SWBT's performance measures by individual CLECs in cases of disputed results. In Nevada, there will be annual audits of the ILEC's performance measures performed by independent auditors, and the results of these audits will be shared with the PUCs and interested CLECs. In addition, there will be processes for individual CLECs to perform mini-audits of individual measures in cases where the test results are disputed. In California processes similar to Nevada have been proposed. Exhibit 3 contains more detailed descriptions of these processes.

²⁴ SWBT reports on a "market area" basis for the provisioning and maintenance measurements, and generally on a five-state basis for other measurements. The market areas are Arkansas; Kansas City, Kansas; Kansas City, Missouri; Oklahoma; St. Louis, Missouri; Central West Texas; Dallas/Ft. Worth Texas; Houston, Texas; and South Texas. Separate provisioning and maintenance measurements are provided for Resale POTS, Resale specials and UNE loop and port combinations combined by SWBT and UNEs. Resale POTS provisioning measurements are broken down by Residence, Business, Field Work ("FW") and No Field Work ("NFW") service. NFW service orders are further broken down by Residence, Business, Dispatch and No Dispatch. Resale design services are broken down by Voice Grade Private Line ("VGPL"), DDS, DS1, DS3 and ISDN. Individual UNE measurements are disaggregated by the unbundled elements contained in the UNE price schedule.

²⁵ SWBT sends its reports to the Telecommunications Task Force of the Antitrust Division of the Department of Justice.

²⁶ These reports are filed with the FCC in SWBT's Oklahoma Section 271 proceeding before the Commission. See In re Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as Amended, to Provide In-Region, InterLATA Services in Oklahoma, Memorandum Opinion and Order, 12 FCC Rcd. 8685 (1997). Copies are sent to staff of the Policy & Program Planning Division of the Common Carrier Bureau with notice to the Chief of the Common Carrier Bureau, as well as to many staff attorneys.

²⁷ PacBell currently posts performance reports for each CLEC, which include measurements for which standards have been determined, either by agreement between PacBell and the CLECs or by the California PUC. Some performance standards remain in

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reporting on the SBC website in July 1999. SBC would be pleased to provide samples of the performance measurements reports from the website at the request of the FCC Staff. The SBC website provides: (a) aggregate data about how the relevant SBC ILEC provides services to itself compared with how it provides services to CLECs and how the relevant SBC ILEC provides services to CLECs compared with objective standards, and (b) data about how the SBC ILECs provide services to individual CLECs. The DOJ, FCC and state commission have access to the entire database. CLECs have access to their own information but do not have access to information about other CLECs, except in the aggregate.²⁸

In a recent decision, the FCC recognized the value of such Internet reporting involving Comparably Efficient Interconnection ("CEI") plans.²⁹ The Commission eliminated the requirement that BOCs file CEI plans prior to initiating or altering their intraLATA information services,³⁰ finding that the public Internet reporting of CEI plans provides substantial safeguards against anticompetitive conduct.³¹ It concluded that "public disclosure of how a BOC is complying with CEI facilitates the successful operation of the

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dispute, and it is expected that the California PUC will rule on those issues shortly. As a result of negotiations between the parties, PacBell and the CLECs have agreed that PacBell will begin official reporting in June 1999 with official results posted on or before July 15, 1999.

²⁸ The website is password protected. CLECs and regulators are given a password upon request.

²⁹ In re Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services, Report and Order, CC Docket Nos. 95-20 and 98-10, 1999 WL 125819 (Feb. 24, 1999).

³⁰ Id. ¶ 4.

³¹ Id. ¶ 12.

CEI requirements themselves.”³² The FCC also recognized the value of having ISPs monitor BOC performance to ensure detection of any performance failure.³³

D. Enforcement Mechanisms

Many of the SBC’s ILEC interconnection agreements provide for significant liquidated damages in the event that the ILEC fails to meet the agreed-upon performance criteria. For example, the interconnection agreement between SWBT and AT&T in Texas (which has been adopted by many other CLECs) provides that SWBT will pay \$25,000 when its performance for a given measurement is below the standard by one to three standard deviations for two consecutive months.³⁴ If SWBT’s performance for a CLEC falls below the standard by more than three standard deviations in any single month, SWBT will pay \$75,000.³⁵

SWBT, PacBell, Nevada Bell, the state commissions and the CLECs are currently in the process of negotiating self-executing enforcement mechanisms as part of the process of obtaining state commission support for Section 271 relief. Although there are differences in the performance enforcement mechanisms being developed in California and Texas, and

³² Id. ¶ 13.

³³ Id. ¶ 15 (“Several ISPs and their supporters also suggest that, in addition to providing non-BOC ISPs with an accessible source of information, the existence of CEI plans helps the Commission enforce compliance with BOC interconnection obligations. We strongly agree. We believe that competitive ISPs will themselves monitor CEI vigilantly Thus, the BOCs’ compliance with the Commission’s CEI requirements can be easily monitored by the parties whom they most concern. . . .”).

³⁴ Southwestern Bell Telephone Company and AT&T Interconnection Agreement, Attachment 17, § 2.4.2, approved in In re Petition of AT&T Communications of the Southwest, Inc. for Compulsory Arbitration to Establish an Interconnection Agreement between AT&T and Southwestern Bell Telephone Company, Order Approving Amendments to Interconnection Agreement, Docket Nos. 16226 and 17579 (Tex. Pub. Util. Comm’n Feb. 26, 1998).

³⁵ Id. § 2.4.3.

between the positions of the ILECs and the CLECs,³⁶ a resolution is expected in California, Nevada and Texas by June 1999. Nevertheless, under either of the proposals being considered in California and Texas, the liquidated damages payments to CLECs will be substantial.

For example, under the current PacBell proposal as requested by the California PUC Staff, PacBell has estimated that PacBell will pay \$400,000 each year even if PacBell provides parity of services and meets the objective standards.³⁷ The expected yearly payments if PacBell were to miss 20% of all submeasures (with misses distributed randomly month-to-month) are almost \$12,000,000.³⁸ If PacBell were to miss 20% of all submeasures and one-third of the missed measures were to become chronic (i.e., missed for three consecutive months), the payments will be over \$60,000,000 per year.³⁹

Under the Texas PUC staff proposal, liquidated damages would be paid on a per occurrence basis to the CLECs each time SWBT fails to provide parity or to meet objective standards performance, and would be paid to the state treasury when SWBT fails to provide parity or meet objective standards performance three consecutive months in a row with respect to 48 broad outcome-based measurements. In addition, under the Texas PUC staff

³⁶ For example, SWBT and PacBell believe that they should not be required to make monetary payments for random statistical variations, but have agreed that a root cause analysis should be done (and made available to regulators and CLECs) if an ILEC misses a standard to determine if the variation was due to poor performance or to a statistical anomaly. The CLECs believe that remedies should be paid any time service is out of parity or the ILEC does not meet a standard. The parties also have differing proposals as to the statistical definition of parity and the levels of remedies. The proposals are discussed in more detail in Exhibit 3, attached hereto.

³⁷ Pacific Bell's (U 1001 C) Opening Brief on Performance Remedies, QSS OII, at 13 (Cal. Publ. Utils. Comm'n Mar. 22, 1999).

³⁸ Id.

³⁹ Pacific Bell's (U 1001 C) Summary of Proposed and Expected Payments, QSS OII, at 4 (Cal. Pub. Utils. Comm'n Feb. 24, 1999).

proposal, SWBT is required to submit a corrective action plan to address occurrences of non-parity performance. SWBT, the Texas PUC and the CLECs are currently in the process of making modifications to and finalizing the performance enhancement plan for Texas.

E. Updating of Performance Measurement and Reporting Systems

The performance measurement and reporting systems are dynamic and will be updated to reflect changes in technology and other developments. In the agreements relating to performance measures being finalized with the state commissions, formal review periods have been proposed for the SBC ILECs, CLECs and regulators to reconvene to review the effectiveness of, and consider modifications to, the performance measurements and the reporting process. In Texas, SWBT, the Texas PUC and the CLECs would meet every six months to review the viability of and the necessity of changes to the performance measures. SWBT would be willing to agree to reviews every six months in each of its four other states, as well. Under the California and Nevada joint proposals, the ILECs and the CLECs will meet every six months beginning February 2000 (7 months after PacBell and Nevada Bell file their first formal reports).

III. Summary and Conclusions

The newly added performance measurements, reporting regimes and performance remedies described above are so extensive that undetected discrimination against CLECs would be essentially impossible, and it would be absurd to think that discrimination that could cause customers or potential customers of CLECs to switch to SBC's ILECs could possibly occur without detection. The performance measurement reports provide CLECs and regulators with information about comparative performance that is more up-to-date, comprehensive and easily accessed than ever before, and, with the companion remedies

regime, provide powerful incentives to ILECs to treat their CLEC customers/competitors fairly and to correct any disparities quickly.

The state regulators will also have continuing authority to review the adequacy of SBC's ILECs' performance. For example, SWBT's proposal contemplates that SWBT, the Texas PUC and the CLECs will meet every six months, and as changes in technology warrant, performance measurements can be amended and the "meaningful opportunity to compete" standards can be modified and tightened at the scheduled meetings among the ILECs, the PUCs and the CLECs. This process will enable regulators to compare easily the level of service SBC's ILECs are providing to CLECs.

The performance measurement regime also eviscerates two essential assumptions underlying the negative spillover or "big footprint" theory put forth by Messrs. Haynes, Jayaratne and Katz on behalf of Sprint: that there will be effective undetected discrimination by SBC ILECs against CLECs and that regulators will not have adequate information to identify and deal with discrimination. In fact, this dynamic regime ensures that volumes of new performance information will be measured, reported and publicly available to CLECs and regulators, rendering undetected discrimination essentially impossible and giving CLECs and regulators more than adequate methods to identify and deal with discrimination.

Moreover, this measurement and reporting regime of SBC's ILECs will be offered for use in Ameritech's region as a starting point for negotiations with Ameritech's CLECs and the relevant PUCs to establish similar comprehensive performance measurements and reporting regimes in Ameritech states once the merger is consummated. This will facilitate the ability of regulators and CLECs to monitor the performance of Ameritech's ILECs. Further, as SBC implements its National-Local Strategy and moves into the 30 new markets

as a CLEC, it will bargain with the other ILECs to include the same rigorous performance measurements in its interconnection agreements. This will enable the regulators to review the quality of service other ILECs are providing with the same level of detail available in the SBC states.

Any lingering concern over the loss of one RBOC benchmark is misplaced and more than offset by the procompetitive effects of the merger and the National-Local Strategy. As the Benchmarking Paper demonstrates, it is this ILEC-to-ILEC comparison which state regulators and the FCC have consistently used to measure the adequacy of a given ILEC's performance. The SBC/Ameritech merger will not reduce this comparative data. Moreover, these new performance measurements and reporting systems far surpass any methods regulators and CLECs have used in the past to evaluate ILEC service quality.

Exhibit 1
To Supplemental Memorandum
of SBC and Ameritech
Regarding Performance Measures

Stipulation and Recommendation
In the Matter of the Joint Application
of SBC Communications Inc., SBC Delaware, Inc.,
Ameritech Corporation, and Ameritech Ohio
for Consent and Approval of a Change of Control

Before the Public Utilities Commission of Ohio

Case No. 98-1082-TP-AMT

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application)	
of SBC Communications Inc., SBC)	Case No. 98-1082-TP-AMT
Delaware, Inc., Ameritech Corporation,)	
and Ameritech Ohio)	
for Consent and Approval)	
of a Change of Control.)	

STIPULATION AND RECOMMENDATION

2. For those Small NECs that are Stipulating Parties, the Joint Applicants will implement the dedicated team of OSS experts referenced in Section IV.B.1. beginning 30 days following the Commission's entry of a final appealable order in this proceeding approving the Merger. Such team will be available to provide assistance for either: i) 12 months following the designation of the team; or ii) 12 months following the Merger Closing Date, whichever results in a longer period of assistance.
3. Within 90 days following the Merger Closing Date, SBC/Ameritech will identify and develop training, procedures, and systems that will be beneficial to Small NECs operating in Ohio. Within 120 days following the Merger Closing Date, SBC/Ameritech will provide notice of such training, procedures, and systems to all Small NECs.

C. NEC Service Centers, Staffing, and Resolution of Current OSS Disputes.

1. The Joint Applicants will not move the Ameritech NEC service centers located in Milwaukee, Wisconsin and Grand Rapids, Michigan for 12 months following the Merger Closing Date.
2. The Joint Applicants will not reduce Ameritech's staffing levels of experienced and qualified staff dedicated and empowered to provide NEC service, including staffing based in Ohio, for 4 years following the Merger Closing Date. The staffing levels shall be based on the highest of: i) the levels in place as of the Merger Closing Date; ii) the levels in place as of the date on which the Commission enters a final appealable order approving the Merger; or iii) the levels in place as of the date of the Stipulation.
3. During the period between the date of this Stipulation and the Merger Closing Date, Ameritech Ohio will use its reasonable best efforts, in good faith, to resolve current OSS disputes.
4. During the period commencing on the date of this Stipulation and ending 4 years following the Merger Closing Date, a NEC may reasonably request in writing, with substantiation, that Ameritech Ohio address claimed problems with an assigned account manager. Ameritech Ohio commits to seriously consider the request after investigation and to meet with the NEC promptly within 30 days to discuss the claimed problems and to attempt to address them.

D. Collaborative Process for Implementing OSS and Facilities Performance Measurements, Standards/Benchmarks, and Remedies.

1. Within 30 days following the Merger Closing Date, SBC/Ameritech will establish a joint SBC/Ameritech task force comprised of their performance

measurements subject matter experts that is to develop a plan to implement OSS and facilities performance measurements, associated standards/benchmarks, and remedies in Ohio.

2. The task force will review the economic and technical feasibility of adopting in Ohio each of the OSS and facilities performance measurements and related standards/benchmarks that SBC has agreed to implement in Texas as a result of the Texas collaborative process ("the Agreed To Standards/Benchmarks," which are attached hereto as Appendix 1). This review will identify the differences, if any, between the underlying legacy systems and equipment, including computer, manual and data generating systems and equipment, in Texas and Ohio which may make it economically or technically infeasible to implement certain agreed to performance measurements and/or related standards/benchmarks in Ohio. If no such differences are identified for a particular measurement or standard/benchmark, SBC/Ameritech will implement that performance measurement or standard/benchmark in Ohio. As of the date of this Stipulation, SBC has agreed to implement in Texas 103 such performance measurements and Agreed To Standards/Benchmarks, which include the performance measurements identified in a U.S. Department of Justice March 6, 1998 letter. Should SBC agree to implement additional measurements or standards/benchmarks in the Texas collaborative prior to the date the task force is established, the task force will include such additional measurements or standards/benchmarks within its review.² Additionally, should SBC agree to remedies (e.g., damages, penalties, and credits) associated with one or more Agreed To Standards/Benchmarks in the Texas collaborative prior to the date the task force is established, the task force will also review such agreed to remedies to determine whether it is appropriate to implement such remedies in Ohio considering any relevant differences between Texas and Ohio.
3. Within 60 days following the Merger Closing Date, in conjunction with such task force, SBC/Ameritech will work with the Commission Staff, NECs, and any other interested parties in a collaborative process to develop the initial performance measurements, standards/benchmarks, and remedies to be implemented in Ohio. SBC/Ameritech will meet with the collaborative participants on a regular basis to review the status of implementing each of the agreed to performance measurements, Agreed To Standards/Benchmarks, and/or remedies in Ohio. Such review will include either:

² Provided, however, that should SBC agree to LNP-related performance standards in Texas, such LNP-related performance standards will not be Agreed To Standards/Benchmarks subject to the task force's review. Nevertheless, any participant in the collaborative process may suggest LNP-related performance standards that are appropriate for discussion and potential implementation in Ohio.

- (A) the timeline for implementing the performance measure, associated standard/benchmark, and remedy in Ohio; or
 - (B) an explanation of why SBC/Ameritech believe it is not economically and/or technically feasible to implement either the performance measure, standard/benchmark or remedy in Ohio, in which case SBC/Ameritech would discuss any substitute measure(s), associated standard(s)/ benchmark(s), and/or remedy(ies) that would be appropriate.
- 4. Within 120 days following the Merger Closing Date, the task force will complete its initial review of performance measurements/ standards/benchmarks/remedies with the collaborative participants.
- 5. Beginning 90 days following the Merger Closing Date and completing within 180 days following the Merger Closing Date, SBC/Ameritech will implement in Ohio (subject to any required Commission approval, which will be timely sought), each of the Agreed To Standards/Benchmarks that they determine are economically and technically feasible to implement. Implementation will occur on a rolling basis as each Agreed To Standard/Benchmark is tested and becomes operationally ready and will fully apply to both resale and facilities, where applicable, when implemented. If SBC/Ameritech determine that it is not economically or technically feasible to implement one or more Agreed To Standards/Benchmarks in Ohio within 180 days following the Merger Closing Date, they agree to implement such Agreed To Standards/Benchmarks as soon as it is economically or technically feasible to do so.
- 6. Within the later of 270 days following the Merger Closing Date or April 1, 2000, SBC/Ameritech will implement in Ohio at least 79 of the 105 performance measurements and related standards/benchmarks as set forth in Appendix 1. SBC/Ameritech will not raise economic or technical feasibility or the exception for Y2K-related problems set forth in Section XIV.C. as an excuse for noncompliance with this commitment. Within 280 days following the Merger Closing Date or April 11, 2000, whichever is later, SBC/Ameritech will file a letter in this docket and serve such letter upon all NECs with whom Ameritech Ohio has an approved interconnection agreement attesting whether or not SBC/Ameritech have met this commitment. Such attestation is subject to review by the Commission. If SBC/Ameritech attest that they did not, or the Commission finds that they did not, implement in Ohio at least 79 of the 105 performance measurements and related standards/benchmarks set forth in Appendix 1 within the later of 270 days following the Merger Closing Date or April 1, 2000, SBC/Ameritech will make a payment of \$20 million, as follows:

- a. \$17.5 million, as payments to NECs providing end-user service within Ameritech Ohio's service area as of the date 270 days following the Merger Closing Date or April 1, 2000, whichever is later, as follows:
- (A) A NEC's Access Lines, for each NEC, shall be its total number of access lines in service, including, without limitation, residence access lines, business access lines and end-user trunks, and ISDN lines, whether resold or not, measured as of the date 270 days following the Merger Closing Date or April 1, 2000, whichever is later, within Ameritech Ohio's current service area. Each NEC that desires to receive any of the \$17.5 million in payments must provide to the Commission Staff, no later than 300 days following the Merger Closing Date or May 1, 2000, whichever is later, a report identifying the number of such lines and trunks for that NEC. Such report shall separately identify: i) the number of resold Ameritech Ohio access lines; ii) the number of unbundled loops purchased from Ameritech Ohio; and iii) all other such lines and trunks in service within Ameritech Ohio's current service area. Each NEC submitting such a report will certify to the Commission Staff the accuracy of such report. The Commission Staff will notify each qualifying NEC of its pro-rata share of the \$17.5 million. Thirty days after the date of such notice, the Commission Staff will provide notice to SBC/Ameritech as to the appropriate disbursement of the \$17.5 million. Within 30 days of receiving this notice from the Commission Staff, Ameritech Ohio will issue checks totalling \$17.5 million made payable to each qualifying NEC for the disbursement amounts listed in Staff's notice to Ameritech Ohio.
 - (B) Total NEC Access Lines shall be the sum of (A) above for all qualifying NECs submitting a timely report.
 - (C) A NEC's Pro-Rata Share shall be the ratio of (A) above for that NEC, divided by (B).
 - (D) Each affected NEC within Ameritech Ohio's current service area shall receive a payment equal to \$17.5 million multiplied by the NEC's Pro-Rata Share; and
- b. \$2.5 million to the Community Technology Fund described below in Section VI.G.

7. If Ameritech/Ohio reports that it has met the commitments as provided in Section IV.D.6. and that is disputed, the Commission may issue an order to resolve that dispute and may set forth appropriate time frames.
8. For each Agreed To Standard/Benchmark to be implemented in Ohio that has an SBC agreed-upon remedy in Texas, SBC/Ameritech will discuss with the collaborative participants the proposed remedy to be attached to such Agreed To Standard/Benchmark in Ohio. After SBC/Ameritech implement an Agreed To Standard/Benchmark in Ohio, they will also implement (subject to any required Commission approval, which will be timely sought) any remedy to be associated with such Agreed To Standard/Benchmark consistent with the approach used in the Texas collaborative process. If the collaborative participants agree, SBC/Ameritech will refrain from implementing a particular remedy. Regardless of whether or not SBC agrees to remedies (e.g., damages, penalties, and credits) associated with one or more Agreed To Standards/Benchmarks in the Texas collaborative, the Ohio collaborative process is not precluded from considering any proposed remedy or remedies.
9. If any participant in the collaborative process disputes SBC/Ameritech's determination that it is not economically or technically feasible to implement a particular Agreed To Standard/Benchmark in Ohio, either at all or within the 180 day time period, the collaborative participants will collaborate to resolve such dispute in the collaborative process. If any such dispute cannot be resolved through the collaborative process, any participant may ask the Commission to resolve such dispute. In any such dispute that may arise before the Commission, SBC/Ameritech retain the burden of proving to the Commission that it is not economically or technically feasible to implement an Agreed To Standard/Benchmark in Ohio.
10. Ameritech Ohio will provide a report to the Commission Staff on the results of its performance measurements on a quarterly basis, beginning the first full calendar quarter in which Ameritech Ohio has at least one full month of data for one or more performance measurements, and will report with respect to transactions affecting Ohio NECs relative to their provision of service to end users in Ohio. If it is not economically or technically feasible, as discussed in the collaborative process, for Ameritech Ohio to report transactions on that basis, reporting will be done either on an Ameritech-wide or SBC-wide basis as reasonably determined by Ameritech Ohio after consulting with Commission Staff. Performance measurement reports will be provided to NECs in conformance with each NEC's interconnection agreement and will be made available electronically if so requested.

11. For a minimum of one year following the Merger Closing Date, and thereafter on an as-needed basis as determined by Staff, participants in the collaborative process will collaborate to implement any additions, deletions, or changes to the performance measurements, standards/benchmarks, and remedies that are implemented by SBC/Ameritech in Ohio. Any participant may propose such addition, deletion, or change based upon experience with such implemented performance measurements, standards/benchmarks, remedies, or any other factor. If a dispute over any such addition, deletion, or change cannot be resolved through the collaborative process, any participant may ask the Commission to resolve such dispute. The participant proposing the addition, deletion, or change retains the burden of proving that such addition, deletion, or change should be adopted in Ohio.

E. OSS Non-Recurring Charge. Ameritech Ohio will not propose any new non-recurring charges for accessing or utilizing Ameritech's generally available OSS systems for 2 years following the Merger Closing Date.

V. INFRASTRUCTURE

A. Capital Investment Commitment. SBC/Ameritech will make capital investments in the Ameritech Ohio infrastructure and network located in Ameritech Ohio's service territory as of the date of this Stipulation in a total aggregate amount of not less than \$1.52 billion over the three full calendar years following the year in which the Merger Closing occurs. (e.g., if the Merger Closing Date is 7-1-1999, the three full calendar years will be 1-1-2000 through 12-31-2002).

B. Network Annual Report. During such period, Ameritech Ohio will provide to the Commission Staff an annual report providing a comparison of Ameritech Ohio's Public Switched Network ("PSN") with each of the non-Ohio PSNs owned and operated by SBC as of the Merger Closing Date. This report will provide individually by PSN the investments made and new services introduced. The report will also contain detailed information relating to Ameritech Ohio's operations, by central office, for network switching, advanced services, and broadband capabilities, and will also include information on interoffice transport. The report provided under